IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1391 OF 2005
IN
SUIT NO.1571 OF 2004

S.K. Networks Company Ltd. ....Plaintiff
V/s.
Amulya Exports Ltd. & Ors. ....Defendants

Mr.Shaunak Thacker with Mr.Kartik Iyer i/b Fox Mandal & Partners for the Plaintiff.
Mr.V.K. Ramabhadran with Ms.Vanita Daver for Defendant Nos.3 and 4.

CORAM: S.J.VAZIFDAR, J.
DATED: 24TH JANUARY, 2006.

P.C. :-

1. The Chamber Summons has been taken out by Defendant Nos.3 and 4 for revocation of leave granted by an order dated 24.4.2004 under clause XII of the Letters Patent.

2. Defendant Nos.1 and 2 entered into a contract with the Plaintiff for supply of certain goods. Defendant No.3 is Oyster Shipping Line (UK) Ltd. Defendant No.4 is Oyster Shipping Agency Pvt. Ltd. Defendant No.4 is the agent of Defendant No.3 in India. Defendant No.5 is the Shipping Corporation of India.

3. The goods purchased by the Plaintiff from Defendant Nos.1 and 2 were entrusted by the Plaintiff with Defendant No.3/Defendant No.4 for shipment to the purchaser thereof in China. Defendant No.3/Defendant No.4 in turn entrusted the goods to Defendant No.5 (SCI) in whose vessel the goods were actually shipped.

4. It is not necessary to deal with the facts in detail as at present I am only concerned with the question of jurisdiction. Mr.Ramabhadran, the learned counsel appearing on behalf of Defendant Nos.3 and 4 submitted that this Court does not have jurisdiction and/or ought not to exercise the jurisdiction in view of the following clause contained in the bill of lading issued by Defendant No.5 to Defendant No.1.

> "JURISDICTION AND LAW CLAUSE
>
> The contract evidenced by Contained in this Bill of Lading is governed by the law of (England) and any claim of dispute arising hereunder or in connection herewith shall be determined by the courts in (London) and not other court."

5. Firstly according to Defendant Nos.3 and 4 themselves there is no privity of contract between the Plaintiff and Defendant Nos.3 and 4 based on this bill of lading. In the circumstances, the above clause regarding jurisdiction cannot operate between the Plaintiff and Defendant No.3/Defendant No.4.

6. Secondly even assuming that the clause is binding on the Plaintiff, in the facts and circumstances of the present case, I am not inclined

to revoke the leave granted.

7. The Plaintiff's case inter-alia is that false boarding dates had been deliberately put on the bill of lading issued by Defendant Nos.3 and 5 with respect to the said consignment to avoid their obligations to the Plaintiff. As a result thereof, according to them, they were unable to negotiate a letter of credit. The buyers in China refused to make payment under the letter of credit as the date of the shipment was beyond the date specified in the letter of credit. With the merits of this contention, I am not concerned at this stage. What is relevant is that the Plaintiff has expressly pleaded that the dates were falsely put on the bill of lading and that the Defendants jointly and severally connived in perpetrating the fraud and had also committed breach of trust.

8. In these circumstances, it is obvious that the case if established would render the Defendants jointly and severally liable to the Plaintiff. It is necessary for the Plaintiff on the above cause of action to make all the Defendants parties as necessary parties and not merely as proper parties. There is no dispute that this Court has jurisdiction to entertain this suit, so far as Defendant Nos.1, 2 and 5 are

concerned. The English Courts would have no jurisdiction so far as the Defendants, other than Defendant No.3, are concerned.

9. In the circumstances, the Chamber Summons is dismissed. There shall be no order as to costs.